

Appl. No. 10/090,377
Atty. Docket No. G-290 (CP-1241)
Amdt. Dated December 31st, 2003
Reply to Office Action of October 3rd, 2003
Customer No. 27752

REMARKS

Claims 1-18 remain pending in the present application. No claim amendments have been made. No new matter has been added. No additional Claim fee is due.

Claims 1-18 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Claussen et al (U.S. Pat. No. 5,061,289) in view of Rose et al (U.S. Pat. No. 4,900,325).

Claims 1-18 have been rejected by the Examiner over a combination of Claussen and Rose. Claussen et al discloses diaminopyrazole based compounds as suitable developer components for hair dye formulations. Of course, the use of a developer component in an oxidative hair dye composition requires the presence of a suitable coupler compound to achieve the desired performance. Claussen discloses a number of conventional coupler materials as suitable for use in conjunction with the diaminopyrazole developers of their invention including the material *m*-phenylenediamine.

Rose et al discloses hair dye compositions that employ specific couplers of the aminophenylamine type. Rose discloses a formula that when a specific combination of R groups are chosen the material which results falls within the Formula I set forth in Applicants claims. Rose further describes these couplers as being particularly suitable for use in combination with a specific class of developer, the 2,4,5,6 - tetraaminopyrimidine type. It is then the Examiner's assertion that as Claussen discloses the genus *m*-phenylenediamine as a coupler, it would be obvious to use any of the aminophenylamine couplers disclosed by Rose in combination with Claussen. Applicants respectfully traverse this rejection.

Contrary to the assertion, the Examiner has failed to establish a prima facie case of obviousness in the combination of Claussen and Rose. Claussen teaches a laundry list of common couplers in the industry, one of the couplers being the material *m*-phenylenediamine. However, Claussen has not disclosed a genus of phenylenediamine materials. Rather, Claussen has clearly disclosed the sole compound and extremely common coupler *m*-phenylenediamine. This material itself is sold under several different Trade names and is employed in the hair dye industry as a coupler. However, a teaching of this single compound by Claussen is not sufficient to suggest the use of the entire genus. Nowhere in the disclosure of Claussen, is it suggested that substituted phenylenediamines may be employed. Thus, Claussen is clearly not teaching one of ordinary skill in the art to use an entire class of materials. This is reinforced by the fact that Claussen recites a list of couplers all of which are individual components, not classes of materials. When referring to broad classes of materials, Claussen employed broader language in the plural such as "aromatic nitro dyes such as" in Col. 2, line 64. Thus, it is quite clear to one of ordinary skill in the art that

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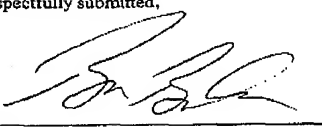
Claussen was referring simply to the solitary compound m-phenylenediamine and was not enabling an entire genus of materials.

With that understanding, there is no motivation to combine the teachings of Rose with those of Claussen to arrive at Applicants claimed invention. Rose discloses substituted aminodiphenylamine couplers which are particularly suitable for use with developers in the class tetraaminopyrimidine. In fact, Rose fails to disclose or teach any pyrazole based developers as described in Claussen. And given the well established unpredictability of the art in combining couplers and developers, and the incredible array of possible combinations set forth in the art as a whole, it is simply not possible to have a reasonable expectation of success in combining Rose and Claussen without some specific teaching of the combination of pyrazole developers and substituted aminodiphenylamine couplers. To suggest otherwise would be employing an Obvious to Try standard for prima facie obviousness which has been well established as improper. Accordingly, Applicants claims 1-18 are novel and unobvious over the asserted combination of Claussen and Rose.

Conclusion

In light of the remarks presented herein, Applicants' respectfully submit that Claims 1-18 are allowable over the prior art of record or any combination thereof. Reconsideration and reexamination are respectfully requested. In the event that issues remain prior to allowance of the noted claims, then the Examiner is invited to call Applicants' undersigned attorney to discuss any remaining issues.

Respectfully submitted,



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